IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3069 of 1989
with
SPECIAL CIVIL APPLICATION No. 5731 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ATI JAKHU MAHESHWARI

Appearance:

1. Special Civil Application No. 3069 of 1989
MR HARDIK C RAWAL for Petitioner
MR UPADHYAY for MUKESH H RATHOD for Respondent No. 1

2. Special Civil Application No. 5731 of 1989
NOTICE SERVED for Petitioner
MR HARDIK C RAWAL for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/02/2001

ORAL JUDGEMENT

Both these petitions challenge the judgment and award dated 2nd November, 1988 of the Labour Court, Rajkot, passed in Reference [LCR] No. 664 of 1986. The petitioner in Special Civil Application No. 3069 of 1989 is the employer ie., the Gujarat State Road Transport Corporation [hereinafter referred to as, `the Corporation']. The petitioner in Special Civil Application No. 5731 of 1989 and the respondent in Special Civil Application No. 3069 of 1989 is the concerned workman [hereinafter referred to as, `the workman'].

The workman, at the relevant time, was serving with the Corporation as a Conductor. On 2nd December, 1993, when the workman was posted on Gandhidham-Kandla route, on spot checking, some six passengers were found to be travelling without tickets and one passenger though had paid fare, was not issued the ticket. For the above act of misconduct, a disciplinary action was initiated against the workman and by order dated 23rd February, 1984, the workman was ordered to be dismissed from service. Feeling aggrieved, the workman raised an industrial dispute which was referred to the Labour Court, Rajkot and was numbered as above. The Labour Court, under the impugned judgment and award dated 2nd November, 1988 partly allowed the Reference to the extent that the order of dismissal from service made against the workman was set-aside and the workman was awarded 50% of the backwages. Feeling aggrieved, both - the workman and the Corporation have preferred the above petition.

The Labour Court having considered the evidence on record has not believed the defence put forth by the workman as regards the six passengers travelling without tickets. The Labour Court has held that, `the workman's negligence in not issuing tickets to six passengers is established'. However, the guilt of the workman in not issuing the ticket to one passenger from whom he was alleged to have recovered the fare of Re.0=25 paise was not established. The Labour Court also considered the past records of the workman which discloses as many as forty four punishments - ranging from `Warning' and `Censure' to `Fine' and `Withholding of increments' for various acts of misconduct. However, considering the eleven years' long service of the workman, the Labour Court considered it expedient to interfere with the order of dismissal, in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. Consequently, the Court set-aside the order of dismissal and by way of

punishment, awarded only 50% of the backwages.

It appears that the Court has awarded 50% of the backwages by way of punishment ie., otherwise the workman would have been awarded full backwages. I am unable to agree with the reasonings adopted by the Court below. Having held the negligence of the workman proved and having considered the past service record of the workman, which is far from being commendable, the Court could not have allowed the workman to go scotfree ie., the Labour Court has not imposed any punishment upon the deliquent workman though the imputation of charge made against him had been held to have been proved. Further, the workman has been awarded premium by awarding the backwages to the extent of 50%, though admittedly he was out of service. Besides, not awarding the full amount of backwages cannot be said to be a `punishment'.

I am informed that the award of the Labour court has been partially implemented to the extent that the workman has been reinstated in service. On the earlier occasion, Mr. Raval was specifically instructed to place on the records of the matter, the conduct of the workman after his reinstatement in service, however, the same has not been done. It is, therefore, presumed that nothing adverse has been found in the conduct of the workman, after his reinstatement in service.

In view of the above discussion, the Special Civil Application No. 3069 of 1989 is partially allowed. The order of the Labour Court setting aside the order of punishment of dismissal imposed upon the workman is confirmed. However, the disciplinary authority shall consider the matter afresh, as far as the imposition of punishment is concerned. Keeping in view the nature of misconduct proved against the workman and his past service record, a punishment except that of termination of service [ie., dismissal, removal or compulsory retirement] be imposed upon the workman. The award with respect to the payment of backwages is quashed and setaside. The period from the date of workman's dismissal from service till the date of reinstatement in service shall be treated as `extra ordinary leave without pay'. Rule is made absolute to the above extent.

The Special Civil Application No. 5731 of 1989 is dismissed. Rule is discharged. Parties shall bear their own costs.

Registry shall maintain a copy of this judgement in both the petitions.

[Miss R.M Doshit, J.]

Prakash*